

United States Courts
Judicial Council of the Eighth Circuit
Thomas F. Eagleton United States Courthouse
111 South 10th Street - Suite 26.325
St. Louis, Missouri 63102-1116

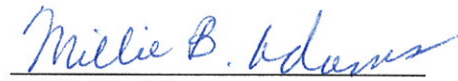
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EIGHTH CIRCUIT JUDICIAL COUNCIL

O R D E R

I hereby certify that the Eighth Circuit Judicial Council has approved the amendments to the Local Rules of the United States Bankruptcy Appellate Panel for the Eighth Circuit.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
October 11, 2005

cc: Judicial Council Members
Bankruptcy Appellate Panel Members
Michael E. Gans, Clerk of Court
Administrative Office

Approval was given by the Rules and Bankruptcy Committees.

JCO 1775

because the proof of compliance may contain patient names that should or must remain confidential.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of the patient shall not be included in the report to protect patient privacy.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

* * * * *

1 (f) CERTIFICATION FOR DIRECT APPEAL TO
2 COURT OF APPEALS

3 (1) *Timely Appeal Required.* A certification of a
4 judgment, order, or decree of a bankruptcy court to a court of
5 appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a
6 certification entered on the docket within the meaning of
7 § 1233(b)(4)(A) of Public Law No. 109-8 until a timely
8 appeal has been taken in the manner required by subdivisions

82 FEDERAL RULES OF BANKRUPTCY PROCEDURE

9 (a) or (b) of this rule and the notice of appeal has become
10 effective under Rule 8002.

11 (2) Court Where Made. A certification that a
12 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
13 exists shall be filed in the court in which a matter is pending
14 for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter
15 is pending in a bankruptcy court until the docketing of the
16 appeal of a final judgment, order, or decree in accordance
17 with Rule 8007(b) or the grant of leave to appeal an
18 interlocutory judgment, order, or decree under 28 U.S.C.
19 § 158(a). A matter is pending in a district court or bankruptcy
20 appellate panel after an appeal of an interlocutory judgment,
21 order, or decree has been docketed in accordance with Rule
22 8007(b) or leave to appeal has been granted under 28 U.S.C.
23 § 158(a).

24 (A) Certification by Court on Request or Court's
25 Own Initiative.

26 (i) Before Docketing or Grant of Leave to
27 Appeal. Only a bankruptcy court may make a certification on
28 request or on its own initiative while the matter is pending in
29 the bankruptcy court.

30 (ii) After Docketing or Grant of Leave to
31 Appeal. Only the district court or bankruptcy appellate panel
32 involved may make a certification on request of the parties or
33 on its own initiative while the matter is pending in the district
34 court or bankruptcy appellate panel.

35 (B) Certification by All Appellants and Appellees
36 Acting Jointly. A certification by all the appellants and
37 appellees, if any, acting jointly may be made by filing the
38 appropriate Official Form with the clerk of the court in which
39 the matter is pending. The certification may be accompanied
40 by a short statement of the basis for the certification, which
41 may include the information listed in subdivision (f)(3)(C) of
42 this rule.

84 FEDERAL RULES OF BANKRUPTCY PROCEDURE

43 (3) Request for Certification; Filing; Service;
44 Contents.

45 (A) A request for certification shall be filed,
46 within the time specified by 28 U.S.C. § 158(d)(2), with the
47 clerk of the court in which the matter is pending.

48 (B) Notice of the filing of a request for
49 certification shall be served in the manner required for service
50 of a notice of appeal under Rule 8004.

51 (C) A request for certification shall include the
52 following:

53 (i) the facts necessary to understand the
54 question presented;

55 (ii) the question itself;

56 (iii) the relief sought;

57 (iv) the reasons why the appeal should be
58 allowed and is authorized by statute or rule, including why a

59 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
60 exists; and

61 (v) an attached copy of the judgment, order, or
62 decree complained of and any related opinion or
63 memorandum.

64 (D) A party may file a response to a request for
65 certification or a cross-request within 10 days after the notice
66 of the request is served, or another time fixed by the court.

67 (E) The request, cross request, and any response
68 shall not be governed by Rule 9014 and shall be submitted
69 without oral argument unless the court otherwise directs.

70 (F) A certification of an appeal under 28 U.S.C.
71 § 158(d)(2) shall be made in a separate document served on
72 the parties.

73 (4) Certification on Court's Own Initiative.

74 (A) A certification of an appeal on the court's own
75 initiative under 28 U.S.C. § 158(d)(2) shall be made in a

86 FEDERAL RULES OF BANKRUPTCY PROCEDURE
76 separate document served on the parties in the manner
77 required for service of a notice of appeal under Rule 8004.
78 The certification shall be accompanied by an opinion or
79 memorandum that contains the information required by
80 subdivision (f)(3)(C)(i)-(iv) of this rule.
81 (B) A party may file a supplementary short
82 statement of the basis for certification within 10 days after the
83 certification.

COMMITTEE NOTE

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. An uncodified provision in Public Law No. 109-8, § 1233(b)(4), requires that, not later than 10 days after a certification is entered on the docket, there must be filed with the circuit clerk a petition requesting permission to appeal. Given the short time limit to file the petition with the circuit clerk, subdivision (f)(1) provides that entry of a certification on the docket does not occur until an effective appeal is taken under Rule 8003(a) or (b).

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the “docketing” under Rule 8007(b) of an appeal of a final judgment, order or decree, or the granting of leave to appeal an interlocutory judgment, order or decree, whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court’s own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

Rule 8003. Leave to Appeal

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* * * * *

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(d) If leave to appeal is required by 28 U.S.C. § 158(a)

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and has not earlier been granted, the authorization of a direct

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appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall

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be deemed to satisfy the requirement for leave to appeal.

COMMITTEE NOTE

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.

Rule 9006. Time

1 * * * * *

2 (b) ENLARGEMENT.

3 (1) In General. Except as provided in paragraphs (2)
4 and (3) of this subdivision, when an act is required or allowed
5 to be done at or within a specified period by these rules or by
6 a notice given thereunder or by order of court, the court for
7 cause shown may at any time in its discretion (1) with or
8 without motion or notice order the period enlarged if the
9 request therefor is made before the expiration of the period
10 originally prescribed or as extended by a previous order or (2)

[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable.]

**CERTIFICATION TO COURT OF APPEALS
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on _____[Date], _____, _____, and _____, [Names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter [] is [] is not required under 28 U.S.C. § 158(a).

[If from a final judgment, order, or decree] This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the _____ District of _____ entered on _____[Date].

[If from an interlocutory order or decree] This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

[The certification shall contain one or more of the following statements, as is appropriate to the circumstances.]

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

Or

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

Or

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

Attorney for Appellant (or Appellant,
if not represented by an attorney)

Printed Name of Signer

Address

Telephone No.

Date

Attorney for Appellant (or Appellant
if not represented by an attorney)

Printed Name of Signer

Address

Telephone No.

Date